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SUPREME COURT, U.S.

No. 80-5272

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

WILLIAM H. BROWN,
Appellant,

vs.

GOODYEAR TIRE AND RUBBER COMPANY,
TRAVELERS INSURANCE COMPANY, and
WORKMEN'S COMPENSATION FUND,
Appellees.

On Appeal From The Supreme Court Of The
State of Kansas

APPELLANT'S RESPONSE TO MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE, TO AFFIRM JUDGMENT

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APPELLANT'S RESPONSE TO MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM JUDGMENT

Comes now the Appellant, William H. Brown, by and through his attorney, George E. McCullough, and submits his response pursuant to Rule 16.5 to the Motion to Dismiss Appeal Or, in the Alternative, To Affirm Judgment filed herein by the Appellee Workmen's Compensation Fund.

Appellant reiterates the position taken in his Jurisdictional Statement, that the Kansas Supreme Court erred in holding that K.S.A. 44-510f(c), now repealed, was constitutional while in effect and did not discriminate against Appellant on the basis of age, nor violated his rights under the Fourteenth Amendment.

Of course, to be valid under the equal protection and due process clauses of the Fourteenth Amendment, K.S.A. 44-510f(c) must have rationally furthered the legislative purpose for which the statute was originally enacted. E.g., Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 49 L.Ed. 2d 520, 96 S. Ct. 2562. Appellant concedes that the Kansas Legislature intended to prevent a duplication of benefits by enacting the statute in question, and that in the abstract, avoiding a duplication

of benefits is a legitimate legislative aim. However, when the nature of workmen's compensation benefits and old age Social Security benefits is analyzed, it is apparent that there is absolutely no rational relationship between the enactment and the legislative purpose.

Workmen's compensation benefits seek to compensate an employee for the loss of earning power which results from a disability caused by a work-related injury. Such benefits are paid pursuant to state law. An employee's right to receive workmen's compensation is based on contract between him and the employer. Under the Kansas Workmen's Compensation Act, certain qualified employers are privileged to be self-insurers; other employers covered by the Act are required to purchase insurance from companies which qualify to provide workmen's compensation coverage.

The Workmen's Compensation Fund is composed of funds from insurance carriers, self-insurers and a tax levy, providing funds to pay the liability of insolvent employers. The Fund exists pursuant to a state program.

Old age Social Security is a federal program funded by a tax on wages paid to an employee, one-half of which is paid by the employer and one-half by the employee. In the case of a self-employed person, a tax is assessed on his net income. Insured individuals are generally entitled to receive benefits upon reaching age 65, depending upon average wages earned during their lives.

As is readily apparent, neither program has any relationships to the other. Workmen's compensation is based on <u>disability</u> resulting from an injury arising out of and in the course of employment; old age Social Security is based on a worker's increasing age and retirement; one is a state program, the other

a federal program; workmen's compensation is based on a contractual arrangement; old age Social Security benefits derive from old age retirement insurance.

K.S.A. 44-510f(c) did not rationally further the legislative purpose of avoiding a duplication of benefits because there was - and is - no relationship between the two benefit programs.

In the Motion to Dismiss or Affirm filed herein by the Appellee Workmen's Compensation Fund, great reliance is placed on Richardson v. Belcher, 404 U.S. 78, 30 L.Ed. 2d 231, 92 S. Ct. 254. That case is clearly distinguishable from the present matter and, in fact, helps illustrate Appellant's position.

In Richardson v. Belcher, this Court held that section 224 of the Social Security Act, which requires a reduction in social security benefits to reflect workmen's compensation payments, has a rational basis and does not violate the due process clause of the Fifth Amendment. The Appellee therein was granted Social Security disability benefits, which were subsequently reduced under section 224 of the Social Security Act upon a finding that he was receiving state workmen's compensation benefits. This Court stated:

> "The original purpose of State workmen's compensation laws was to satisfy a need inadequately met by private insurance or tort claim awards. Congress could rationally conclude that this need should continue to be met primarily by the States, and that a federal program that began to duplicate the efforts of the states might lead to the gradual weakening or atrophy of the state programs." 404 U.S. at 83-84.

The Richardson case does not support Appellee's position. The Appellee therein was receiving Social Security disability benefits and state workmen's compensation benefits prior to the

time the Social Security benefits were reduced pursuant to section 224. Those two benefit programs are based on a worker's disability. Old age social security is based on advanced age and retirement, regardless of disability.

Appellee herein asserts that K.S.A. 44-510f(c) did not create a classification based on age and that "[a]ppellant's worker's compensation benefits terminated not because of his age, but because he began to receive Social Security retirement benefits." The fallacy in these assertions is that a citizen is not entitled to Social Security retirement benefits until he reaches a relatively advanced age, i.e., 65 years. The classification is clearly based on age and does not further the 44-510f(c)'s legislative purpose. See Morales v. Minter, 393 F. Supp. 88 (D. Mass. 1975); Brown v. Saginaws Metal Cast Plants, C.M. Div., 68 Mich. App. 85, 241 N.W. 2d 769.

For the foregoing reasons, Appellant prays that Appellee's Motion to Dismiss Or in the Alternative, To Affirm Judgment, be denied and that this Court take jurisdiction of this appeal.

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CERTIFICATE OF SERVICE

I, George E. McCullough, a member of the Bar of the Supreme Court of the United States and counsel of record for Appellant William H. Brown, being duly sworn, takes oath and states that on September 26, 1980, pursuant to Rule 28, Rules of the Supreme Court, I served one copy of the foregoing as follows:

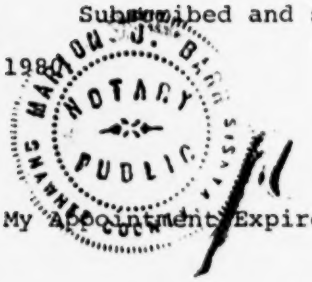
John C. Peterson, 820 Quincy,
Suite 610, Topeka, Kansas
66603, attorney for Appellee
Workmen's Compensation Fund.

by depositing said copy in the United States Post Office, Topeka, Kansas, first class postage prepaid, properly addressed to the above-named counsel of record. All parties required to be served have been served.

Dated: September 26, 1980.

GEORGE E. McCULLOUGH

Subscribed and sworn to before me this 26th day of September, 1980.



MARION J. BARR, NOTARY PUBLIC

My Appointment Expires: June 29, 1984